

STATE OF MONTANA COMPLIANCE SUPPLEMENT FOR AUDITS OF LOCAL GOVERNMENT ENTITIES	REF: CNTY-8
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PROGRAM/SUBJECT: Counties - Long-Term Debt	

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COMPLIANCE REQUIREMENTS AND SUGGESTED AUDIT PROCEDURES:

(Note: Use of Bond Proceeds and Borrowed Money (MCA 7-6-4011)

- Except as otherwise provided by law, money borrowed by a local government may be used only for the purpose for which the money was borrowed. Unless restricted by law, surplus borrowed money may be used to redeem the debt for which the money was borrowed.
- In addition, the authorization of bonds by the electors or the governing body constitutes the appropriation of the bond proceeds for the purpose for which the bonds are authorized.)

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COMPLIANCE REQUIREMENTS AND SUGGESTED AUDIT PROCEDURES:

GENERAL OBLIGATION BONDS:

1. Compliance Requirements:

- Except for certain purposes specified in MCA 7-7-2221 and 7-7-2311 (see discussion below), a county cannot issue general obligation bonds without submitting the question of issuing such bonds to the registered electors of the county at a special election held in conjunction with a regular or primary election, at a general election, or at a special election that is conducted by mail ballot. (MCA 7-7-2223)
 - A bond election may be called:
 1. by unanimous resolution of the governing body of the county. The resolution must contain the provisions specified in MCA 7-7-2227(2). (MCA 7-7-2223 and 2227)
- OR**
- 2. after a petition has been presented to the governing body of the county asking that such election be held and the question submitted. The petition must be signed by at least 20% of the registered electors of the county and be certified by the election administrator. (MCA 7-7-2223 and 2224)
 - The issuance of the general obligation bonds is considered approved at the election if the following results are achieved:
 1. 40% or more of the qualified electors vote on the bond issue and a majority of the votes were in favor of the proposition, or
 2. more than 30% but less than 40% of the qualified electors vote on the bond issue and 60% of the votes were in favor of the proposition.

When the percent of qualified electors voting is less than 30%, the proposition is considered to be rejected. (MCA 7-7-2237)
 - A county may issue general obligation bonds by an adopted resolution of the county commissioners without an election for the following purposes:
 1. bonds enabling the county to liquidate its indebtedness to another county due to the creation of another county or the changing of a county boundary line, as set forth in MCA 7-7-2201(5) (MCA 7-7-2221);
 2. bonds to satisfy a judgment rendered against the county by a court of competent jurisdiction; (MCA 7-7-2221)
 3. bonds issued for refunding, paying and redeeming optional, redeemable or maturing bonds, as set forth in MCA 7-7-2301(1); (MCA 7-7-2311) and
 4. refunding bonds for which the holders have agreed to accept less than the full amount of principal and interest as full payment, as set forth in MCA 7-7-2301(2). (MCA 7-7-2311)
 5. bonds issued by a county for the purpose of deriving revenue for the repayment of tax protests lost by the county, (MCA 15-1-402(7)(c))

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COMPLIANCE REQUIREMENTS AND SUGGESTED AUDIT PROCEDURES:

GENERAL OBLIGATION BONDS - continued:

Suggested Audit Procedures:

- If the county issued general obligation bonds during the audit period, review documentation on file to determine that the question of issuing the bonds was submitted to the electorate by resolution initiated by the governing body, or by resolution initiated by a petition signed by at least 20% of the registered electors of the county.
- Review the election results and determine that the issuance of the general obligation bonds was properly approved by the voters, as described above.
- If general obligation bonds were issued by resolution of the county commissioners during the audit period without an election, determine that they were issued for one of the allowable purposes described above.

2. Compliance Requirements:

- If the voters approve the issuance of the general obligation bonds, a resolution must be adopted by the governing body of the county that states the specific terms of the bonds. (MCA 7-7-2238)
- Notice of the sale of the bonds must be published as required by MCA 7-7-2251 and 2252.

Suggested Audit Procedure:

- Obtain a copy of the required resolution and determine that it meets the requirements listed in MCA 7-7-2238, and that notification of the sale of the general obligation bonds was published as required.

3. Compliance Requirements:

- The county may fix the minimum price for the bonds in an amount not less than 97% of the face value if the board of county commissioners determines that the sale is in the best interests of the county. (MCA 7-7-2238(4))
- General obligation bonds may not be sold by a county at less than the minimum bid specified for their sale with accrued interest to the date of delivery. (MCA 7-7-2254)
- The board shall accept the bid that it judges most advantageous to the county. (MCA 7-7-2254)

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COMPLIANCE REQUIREMENTS AND SUGGESTED AUDIT PROCEDURES:

GENERAL OBLIGATION BONDS - continued:

3. Compliance Requirements - continued:

- The board may reject any bids and sell the bonds at private sale if the board considers it in the best interest of the county. (MCA 7-7-2254)

Suggested Audit Procedure:

- If general obligation bonds were issued during the audit period, review documentation on file related to the bond sale and determine that the bonds were not sold:
 - a. for less than 97% of the face value of the bonds if the board of county commissioners determines that the sale is in the best interests of the county, and
 - b. at less than the minimum bid specified for their sale with accrued interest to the date of delivery.

4. Compliance Requirements:

- The county treasurer must maintain a bond register containing the following information:
 - a. The date of issue;
 - b. The maturities of the bonds subject to early redemption and the redemption dates;
 - c. The date when the bonds become due;
 - d. The amount of all payments of both principal and interest required on each bond, with the dates when the payments must be paid;
 (MCA 7-7-2257)

- The county treasurer is also to be furnished an unsigned and canceled printed copy of a bond from each issue, as so issued and registered, which is to be preserved on file. (MCA 7-7-2258)

(Note: May not apply to registered bonds issued after July 1, 1983.)

Suggested Audit Procedure:

- Review the bond register to determine if it contains the information required by statute, and determine if a sample copy of a bond from each issue is on file.

5. Compliance Requirement:

- All bonds and interest coupons that are paid must be canceled, and the amounts of principal and interest paid and the date they were paid must be recorded in a bond register. (MCA 7-7-2272)

(Note: May not apply to registered bonds issued after July 1, 1983.)

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COMPLIANCE REQUIREMENTS AND SUGGESTED AUDIT PROCEDURES:

GENERAL OBLIGATION BONDS - continued:

Suggested Audit Procedure:

- Review selected bonds and coupons that have been paid by the county and determine if they have been marked paid and that the payment was entered in the bond register.

6. Compliance Requirements:

- There must be a separate sinking fund account for each issue or series of outstanding general obligation bonds. (MCA 7-7-2261)
- All taxes collected for interest and principal on the general obligation bonds must be credited to the sinking fund for which the taxes were levied. (MCA 7-7-2261)
- All investment income from investing moneys of the sinking funds must be credited to the sinking fund, except that the board of county commissioners may, at its discretion, use the interest earnings as they accrue to fulfill or complete the specific project for which the bonds were issued. (MCA 7-7-2261, 7-7-123 & 124)
- If the bonds are not yet due but are redeemable under optional provisions, money in the sinking fund is not subject to investment but should instead be applied to payment and redemption of the bonds. (MCA 7-7-124)

(Note: AGO #18, Vol. 44, stipulates that money in a sinking fund is not available for investment if any of the bonds for which the sinking fund was established are not yet due but are then redeemable under optional provisions. While investment in government securities is authorized under MCA 7-7-123, it is authorized only to the extent that the sinking fund is not needed for payment of the bonds or interest. Therefore, excess bond proceeds may not be retained in a separate fund and invested without first using the proceeds to calculate the amount of annual tax levy for a sinking fund. Any remainder of the proceeds may then be invested in accordance with MCA 7-7-123.)

Suggested Audit Procedures:

- Review the financial records and determine that the local government is maintaining separate sinking funds for each series of bonds.
- As part of overall testing of tax revenue (tax distribution) and interest revenue (interest distribution), determine that bond sinking funds are receiving the proper portion of the taxes collected and the proper amount of interest earned from investments.

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COMPLIANCE REQUIREMENTS AND SUGGESTED AUDIT PROCEDURES:

GENERAL OBLIGATION BONDS - continued:

Suggested Audit Procedures:

- Determine if the bonds have an optional early redemption provision. If so, verify that money in the sinking fund is applied to payment and early redemption of the bonds, rather than being invested.

7. Compliance Requirement:

- When all general obligation bonds of any series or issue and all interest have been fully paid and there is money remaining in the bond sinking fund, the excess should be transferred to the general fund or to the sinking and interest fund of any other series or issue of bonds outstanding designated by the county commissioners. (MCA 7-7-2274)

Suggested Audit Procedure:

- If bonds have been fully paid during the current year, determine that any excess money in the bond sinking fund was transferred to the general fund of the entity, or to the sinking and interest fund of another bond issue if so designated by the county commissioners.

8. Compliance Requirement:

- In order for a county to issue general obligation refunding bonds, the county commissioners must adopt a resolution setting forth the facts regarding the bonds to be refunded, showing the reason for issuing such refunding bonds, and fixing the details of the bond issue and giving notice of the sale. (MCA 7-7-2302, 7-7-2311, and 7-7-2222)

Suggested Audit Procedure:

- If the county issues general obligation refunding bonds during the audit period, determine that the bonds were issued pursuant to a resolution of the county commissioners that contains all required information as described above.

9. Compliance Requirements:

- Bonds of the county shall bear interest at such rates or rates as its governing body shall determine. (MCA 17-5-102)
- Except as noted below, the interest rate on general obligation refunding bonds must be at least ½ of 1% less than the outstanding bonds that were refunded. (MCA 7-7-2304)

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COMPLIANCE REQUIREMENTS AND SUGGESTED AUDIT PROCEDURES:

GENERAL OBLIGATION BONDS - continued:

9. Compliance Requirements - continued:

- In determining whether the refunding bonds satisfy the savings requirements when variable rate bonds are being refunded, the following must also be considered:
Bonds outstanding for at least 5 complete fiscal years:
if the bonds proposed to be refunded bear interest at a variable rate, the average annual interest rate on the bonds being refunded must be calculated by reference to the interest rate on the bonds currently in effect and over the immediately preceding 5 complete fiscal years of the issuer;
OR
Bonds outstanding for less than 5 complete fiscal years:
if the variable rate bonds being refunded have not been outstanding longer than 5 complete fiscal years, then the average annual interest rate on the bonds being refunded must be calculated by reference to the interest rate on the bonds being refunded currently in effect and over the total number of complete fiscal years of the issuer since the date of issuance of the bonds.;
(MCA 7-7-2304)
- General obligation refunding bonds may bear interest in excess of the rate on the refunded bonds if the issuance of the refunding bonds, including the total costs of refunding the bonds, results in a reduction of total debt service cost to the county. (MCA 7-7-2304)
- Variable rate refunding bonds may also be issued if the board of county commissioners determines that the issuance of variable rate refunding bonds is reasonably expected to result in less interest payable on the refunding bonds than the interest payable on the refunded bonds.
- The principal amount of the refunding bonds may be greater than the principal amount of the outstanding bonds if there is a reduction of total debt service cost to the county. (MCA 7-7-2304)

Suggested Audit Procedures:

- Review the interest rates on bond issues and determine that they are as set by the governing body.
- Obtain the interest rate of the refunding and the refunded bonds and determine if the interest rate on the refunding bonds is at least ½ of 1% less than the refunded bonds. If not, determine if the issuance of the refunding bonds, including the total cost of refunding the bonds, results in a reduction of total debt service costs to the county.

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COMPLIANCE REQUIREMENTS AND SUGGESTED AUDIT PROCEDURES:

GENERAL OBLIGATION BONDS - continued:

Suggested Audit Procedures - continued:

- Obtain the principal amount of the refunding general obligation bonds and the refunded bonds and determine that the principal on the refunding bonds is less than the refunded bonds. If not, determine that the issuance of the refunding bonds results in a reduction of the total debt service cost to the county.

10. Compliance Requirements:

- General obligation refunding bonds may be sold to refund outstanding bonds in advance of when such bonds mature or are subject to redemption. (MCA 7-7-2316)
- The proceeds from the refunding must be deposited in escrow with a suitable banking institution. (MCA 7-7-2316)
- The funds must be invested in “securities that are general obligations of the United States or the principal and interest of which are guaranteed by the United States and which mature or are callable at the option of the holder on those dates and bear interest at those rates and are payable on the dates that are required to provide funds sufficient, with any cash retained in the escrow account, to pay when due the interest to accrue on each bond being refunded to its maturity or redemption date, if called for redemption, to pay the principal of the bond at maturity or upon the redemption date, and to pay any redemption premium.” (MCA 7-7-2316)

(Note: If the funds initially deposited in escrow are sufficient, without regard to any investment income on those funds, to redeem in full the bonds being refunded as of their redemption date and to pay the principal of and interest and premium on the bonds being refunded at their stated maturities, the funds may be invested in the securities described in above or in a money market fund composed exclusively of eligible securities described in MCA 7-6-202, and that otherwise satisfies the requirements of MCA 7-6-202(3).)

- The escrow account is irrevocably appropriated to the payment of the principal of and interest and redemption premium on the bonds being refunded. (MCA 7-7-2316)

Suggested Audit Procedure:

- If general obligation refunding bonds have been issued during the audit period to refund outstanding bonds in advance of when such bonds mature or are subject to redemption, determine that the bond proceeds are properly deposited in an escrow account, invested as provided above, and irrevocably appropriated for the payment of principal and interest on the refunded bonds.

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COMPLIANCE REQUIREMENTS AND SUGGESTED AUDIT PROCEDURES:

GENERAL OBLIGATION BONDS - continued:

11. Compliance Requirements:

- The board of county commissioners of every county of the state may issue, negotiate, and sell coupon bonds on the credit of the county, as provided in this part, for the purpose of funding, paying in full, or compromising, settling, and satisfying any judgment rendered against the county in a court of competent jurisdiction, including the repayment of tax protests lost by the county, when there are not sufficient funds available to pay the judgment. Bonds issued for any of the purposes designated in 7-7-2202 may not be for a longer term than 20 years. (MCA 7-7-2202 and 7-7-2206)
- A county may satisfy a final judgment or settlement out of funds that may be available from proceeds from the sale of bonds issued by the county for the purpose of deriving revenue for the payment of the judgment or settlement liability. The governing body of a county may issue bonds pursuant to procedures established by law. Property taxes may be levied to amortize the bonds. (MCA 2-9-316)
- The county commissioners' resolution providing for the issuance of such bonds must state the facts concerning the judgment to be funded and any compromise agreement that may have been entered into between the board and the judgment creditor. (MCA 7-7-2202)

Suggested Audit Procedures:

- If the county issued general obligation bonds during the audit period to fund a judgment, determine that the judgment was rendered against the county by a court of competent jurisdiction and that the county could not have paid the judgment from available funds.
- If a county satisfies a final judgment or settlement out of funds from proceeds from the sale of bonds issued by the county for the purpose of deriving revenue for the payment of the judgment or settlement liability, determine that the governing body of a county issued the bonds pursuant to procedures established by law. If property taxes were levied, verify that the proceeds were used to amortize the bonds.
- If the county issued general obligation bonds during the audit period to fund a judgment, determine that the resolution of the county commissioners providing for the issuance of the bonds contained the information required by MCA 7-7-2202.

12. Compliance Requirements:

- A county may issue limited general obligation bonds to:
 - (a) finance the establishment, construction, reconstruction, improvement, maintenance, and repair of county roads;

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COMPLIANCE REQUIREMENTS AND SUGGESTED AUDIT PROCEDURES:

GENERAL OBLIGATION BONDS - continued:

12. Compliance Requirements s - continued:

- (b) acquire rights-of-way for roads and highways; or
 - (c) acquire capital equipment or supplies to improve, maintain, or repair roads and highways.

(MCA 7-14-2520)
- Road and highway bonds proceeds may be used to pay the costs for the issuance and sale of the bonds. (MCA 7-14-2520))
- The bonds may not be issued for a term longer than 20 years. (MCA 7-14-2520)
- The road and highway bonds may be sold at public or private sale on terms and at prices that the county commissioners determine to be advantageous. The bonds must be authorized, sold, and issued, with provision for their payment, in accordance with the provisions of Title 7, Chapter 7, Part 22, except as those provisions may conflict with the express provisions of this section. (MCA 7-14-2520)
- The bonds, except for bonds issued to refund bonds issued for the purpose described in (a) through (c), above, must be authorized by the registered electors of the county, exclusive of the electors residing within the incorporated area of a city or town located in whole or in part within the county, in accordance with the provisions of Title 7, Chapter 7, Part 22. (MCA 7-14-2520)
- Bonds issued under 7-14-2520 are legal and valid obligations of the county, and the full faith and credit of the county must be irrevocably pledged to the prompt payment of the principal of the bonds and interest on the bonds as they become due. Property taxes for the payment of the principal or interest may not be levied by the county against the taxable property in the incorporated area of a city or town located in whole or in part within the county. (MCA 7-14-2520)

Suggested Audit Procedure:

- If the county issued general obligation bonds during the audit period to fund road and highway bonds, determine that the bonds were issued pursuant to the provisions of MCA 7-14-2520, and that the bonds were authorized as described above.

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COMPLIANCE REQUIREMENTS AND SUGGESTED AUDIT PROCEDURES:

GENERAL OBLIGATION BONDS - continued:

13. Compliance Requirements:

- County general obligation bonds issued for the following purposes may not be issued for a term longer than 20 years:
 - a. acquiring land for sites and grounds for a public building within the county and under its control;
 - b. acquiring land for any other public use or activity within the county and under its control;
 - c. constructing, erecting, or acquiring necessary public buildings within the county, under its control, and authorized by law; making additions to and repairing buildings; and furnishing and equipping the buildings;
 - d. building, purchasing, constructing and maintaining devices intended to protect the safety of the public from open ditches carrying irrigation or other water;
 - e. paying any judgment rendered against the county in a court of competent jurisdiction, including the repayment of tax protests lost by the county, as provided in MCA 7-7-2202
 - f. providing for roads and highways as provided in MCA 7-14-2520.
(MCA 7-7-2206 (1), 7-7-2201 (1) through (4), 7-7-2202, and 7-14-2520 MCA)
- County general obligation bonds issued for the following purposes may not be issued for a term longer than 10 years: (MCA 7-7-2206(2) and 7-7-2201(5) & (6))
 - a. to enable a county to pay its indebtedness to another county as a result of the creation of a new county or the changing of any county boundary line;
 - b. funding, paying and retiring outstanding county warrants that were issued against the general, road, or bridge funds when there is not sufficient money in the fund to pay such warrants; and the levying of taxes to pay and retire the warrants within a period of three years would, in the judgment of the board of county commissioners, be a hardship and undue burden on the taxpayers of the county.
- The term of refunding general obligation bonds cannot exceed 10 years or the unexpired term of the bonds being refunded. If the unexpired term of the bonds to be refunded is more than 10 years, the refunding bonds may be issued for the unexpired term. The term for refunding general obligations bonds may not exceed 20 years under any circumstances. (MCA 7-7-2303)

Suggested Audit Procedure:

- Determine that the terms of any county general obligation bonds issued do not exceed the limitations described above.

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COMPLIANCE REQUIREMENTS AND SUGGESTED AUDIT PROCEDURES:

GENERAL OBLIGATION BONDS - continued:

14. Compliance Requirements:

- Other than refunding bonds, all bonds issued for a longer term than 5 years must be redeemable at the option of the county on any interest payment date after one-half of the term for which they were issued has expired, and the redemption option must be stated on the face of the bonds. (MCA 7-7-2207)
- Whenever there is available money in any sinking and interest fund over and above the amount required for payment of principal and interest becoming due on the next interest payment date and sufficient to pay and redeem one or more outstanding bonds, or principal installments in the case of amortization bonds, of the issue or series to which the sinking and interest fund belongs, which bonds are not yet due but are then redeemable or will become redeemable on or before the next interest payment date, the county treasurer shall apply the available money in redemption of as many of the bonds, or principal installments in the case of amortization bonds, as the available money will pay and redeem to a redemption date on or before the next interest payment date, as fixed by the county treasurer. (MCA 7-7-2268)
- The county treasurer shall give notice, by mail sent at least 30 days before the redemption date, to the holder of the bonds, if ownership of the bonds is registered or is otherwise known to the treasurer, to the registered owners at their addresses as they appear in the bond registration books, and to any bank or financial institution at which the bonds are payable that the bonds or principal installments will be paid and redeemed on that date. A defect in or failure to give notice may not affect the validity of the proceedings for the redemption of a bond or principal installment not affected by the defect or failure. If the ownership of the bonds is not registered, the county treasurer shall also publish in the official newspaper of the county or other newspaper designated in the resolution authorizing the issuance of the bonds once, not less than 30 days prior to the redemption date, a notice that the bonds or principal installments have been called for redemption and will be paid in full on the redemption date. If actual notice of the call has been received, the holder of a bond may waive published or mailed notice. If the bonds or principal installments are payable at a bank or financial institution, the county treasurer shall remit to the bank or financial institution, before the redemption date, an amount sufficient to pay and redeem the bonds or principal installments with interest accrued on the bonds or principal installments. If the bonds are not presented for payment and redemption on the redemption date, interest ceases on that date if the funds for payment and redemption have been deposited in a bank or financial institution. (MCA 7-7-2268)

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COMPLIANCE REQUIREMENTS AND SUGGESTED AUDIT PROCEDURES:

GENERAL OBLIGATION BONDS - continued:

Suggested Audit Procedures:

- If the county issued general obligation bonds during the audit period, review a copy of the bond and determine that it clearly indicates that the bonds are redeemable at the option of the county as noted above.
- As part of testing long-term debt verify that no sinking funds had excess monies that could be used to redeem the general obligation bonds. If any are identified, verify that the county treasurer applied the available money to the redemption of as many of the bonds as there was available money in the manner prescribed above.

15. Compliance Requirements:

- A county authorized to sell general obligation bonds under Title 7, Chapter 7, MCA, may issue and sell any portion of the bond in denominations of less than \$5,000, either by competitive public sale or directly to members of the public, at preestablished interest rates. These bonds may be known as "citizen bonds." Citizen bonds may be issued for any purpose for which a county may issue general obligation bonds. For additional information regarding "citizen bonds" see MCA 7-7-2212 through 7-7-2215.

Suggested Audit Procedure:

- If a county has issued "citizen bonds" under the provisions of Title 7, Chapter 7, Part 22, MCA, during the audit period, determine that the provisions of MCA 7-7-2212 through 7-7-2215, have been complied with.

REVENUE BONDS:

16. Compliance Requirements:

- Revenue bonds may be issued for the acquisition, purchase, construction, reconstruction, improvement, betterment or extension of county cultural, social, and recreational facilities; and solid waste management. (MCA 7-7-2501; Title 7, Chapter 16, Part 21, MCA; and Title 75, Chapter 10, Part 1, MCA)
(**Note:** See compliance requirements No. 32 – 35 below for requirements relating to the issuance of bonds for health care facilities and boarding homes. (Title 7, Chapter 34, Parts 22, 23, and 24))
- These revenue bonds may be issued by resolution of the governing body without an election. (MCA 7-7-2501; Referenced to MCA 7-7-4426)

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COMPLIANCE REQUIREMENTS AND SUGGESTED AUDIT PROCEDURES:

REVENUE BONDS - continued:

16. Compliance Requirements - continued:

- When the governing body of the county considers it necessary to issue revenue bonds pledging the general credit of the county, the issuance of the bonds must be authorized by submitting the question to the registered electors of the county at the next general county election; at an election that is conducted by mail ballot as provided in Title 13, Chapter 19, MCA; or at a special election that is held in conjunction with a regular or primary election and that the governing body may call for the purpose. (MCA 7-7-2501; Referenced to MCA 7-7-4426)
- The maturity date of the revenue bonds may not exceed 40 years. (MCA 7-7-2501; Referenced to MCA 7-7-4432.)

Suggested Audit Procedures:

- If revenue bonds have been issued during the audit period, review a copy of the resolution authorizing the bonds and determine if the bonds were issued for an authorized purpose.
- If the revenue bonds were issued pledging the general credit of the county, determine that the issuance of the bonds was approved by the registered electors at an election as provided above.
- Determine that the maturity date of the revenue bonds does not exceed 40 years.

17. Compliance Requirement:

- A county that is issuing revenue bonds must prescribe and collect reasonable rates, fees, or charges for the services, facilities, and commodities of the undertaking and shall revise the rates, fees, or charges from time to time whenever necessary so that the undertaking is and remains self-supporting. The property taxes specifically authorized to be levied for the general purpose served by an undertaking or resort taxes approved, levied and appropriated to an undertaking in compliance with MCA 7-6-1501 through 7-6-1509, constitute revenue of the undertaking and may not result in an undertaking being considered not self-supporting. The rates, fees, or charges, along with any appropriated property or resort tax collections, must produce revenue at least sufficient to:
 - a. pay when due all bonds and interest on the bonds, the payment of which the revenue has been pledged, charged, or otherwise encumbered, including reserves for the bonds; and
 - b. provide for all expenses of operation and maintenance of the undertaking, including reserves.
 (MCA 7-7-2501; Referenced to MCA 7-7-4424)

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COMPLIANCE REQUIREMENTS AND SUGGESTED AUDIT PROCEDURES:

REVENUE BONDS - continued:

Suggested Audit Procedure:

- Review the balances in the various funds and accounts used for each revenue bond issue to determine if there is sufficient revenue to pay all debt service on bonds, notes or other obligations plus operating and maintenance expenses, and to maintain all required reserves.

18. Compliance Requirement:

- The revenue bond issues or refunding revenue bond issues must comply with the related bond indenture agreements, permissible covenants, and bond ordinances or resolutions. (MCA 7-7-2501; Referenced to MCA 7-7-4428, 7-7-4429, and 7-7-4622.)

Suggested Audit Procedure:

- Review copies of the bond indenture agreement, bond covenants, or bond ordinances or resolutions. Determine if the county is in compliance with specific requirements.

19. Compliance Requirement:

- The governing body must adopt a resolution authorizing the issuance of refunding revenue bonds. (MCA 7-7-2501; Referenced to MCA 7-7-4621.)

Suggested Audit Procedure:

- If refunding revenue bonds were issued during the audit period, determine that the issuance of the bonds was authorized by resolution of the governing body.

20. Compliance Requirements:

- When refunding revenue bonds are sold 6 months or more before the earliest date on which all the bonds being refunded mature or are prepayable, the proceeds from the refunding bonds must be placed in an escrow account with a bank or trust company.
- The bank or trust company may be located within or without the state; it must be a member of the Federal Reserve System; and it must have a combined capital and surplus of not less than \$1 million.
- The proceeds deposited in escrow shall be invested in securities maturing on such dates and bearing interest at such rates as shall be required to provide funds sufficient to pay, when due, the interest due on each bond refunded to its maturity or, if it is prepayable, to the earliest date upon which the bond may be called for redemption;

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COMPLIANCE REQUIREMENTS AND SUGGESTED AUDIT PROCEDURES:

REVENUE BONDS - continued:

20. Compliance Requirements - continued:

and to pay and redeem the principal amount of each such bond at maturity or, if prepayable, at its earliest redemption date; and to pay any premium required for early redemption.

- The funds must be invested in general obligations of the United States government, securities whose principal and interest payments are guaranteed by the United States government, and securities issued by the following United States government agencies: banks for cooperatives, federal home loan banks, federal intermediate credit banks, federal land banks, and the federal national mortgage association.

(MCA 7-7-2501; Referenced to MCA 7-7-4504.)

Suggested Audit Procedure:

- If refunding revenue bonds were issued during the audit period, determine that the proceeds were placed in an escrow account with a legally authorized bank or trust company, and that they have been properly invested as provided by law.

21. Compliance Requirement:

- The maturity date of the refunding revenue bonds may not exceed the useful life of the project or enterprise, as determined by the governing body, and in any event may not exceed 40 years. (MCA 7-7-2501; Referenced to MCA 7-7-4610.)

Suggested Audit Procedure:

- If refunding revenue bonds were issued during the audit period, determine that the maturity date of the refunding bonds does not exceed the useful life of the project or enterprise, or a maximum of 40 years.

22. Compliance Requirements:

- Bonds of the county shall bear interest at such rates or rates as its governing body shall determine. (MCA 17-5-102)
- Refunding revenue bonds may not be issued unless their average annual interest rate, computed to their stated maturity dates and excluding any premium from such computation, is at least $\frac{3}{8}$ of 1% less than the average annual interest rate on the bonds that are being refunded, computed to their respective stated maturity dates. Refunding bonds may bear interest at a rate lower or higher than the bonds refunded if:

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COMPLIANCE REQUIREMENTS AND SUGGESTED AUDIT PROCEDURES:

REVENUE BONDS - continued:

22. Compliance Requirements - continued:

1. they are issued to refund matured principal and interest for the payment of which revenues on hand are not sufficient;
2. the refunding bonds are combined with an issue of new bonds for reconstruction, improvement, betterment, or extension and the lien of the new bonds upon the revenues of the undertaking or project is junior and subordinate to the lien of the outstanding bonds refunded;
3. the issuance of the refunding bonds, including the total cost of refunding the bonds, results in a reduction of total debt service cost to the county, or
4. the governing body determines that the issuance of variable rate refunding bonds is reasonably expected to result in less interest payable on the refunding bonds than the interest payable on the refunded bonds..

(MCA 7-7-2501; Referenced to MCA 7-7-4502)

- In determining whether the refunding bonds satisfy the savings requirements when variable rate bonds are being refunded, the following must also be considered:

Bonds outstanding for at least 5 complete fiscal years:

if the bonds proposed to be refunded bear interest at a variable rate, the average annual interest rate on the bonds being refunded must be calculated by reference to the interest rate on the bonds currently in effect and over the immediately preceding 5 complete fiscal years of the issuer;

OR

Bonds outstanding for less than 5 complete fiscal years:

if the variable rate bonds being refunded have not been outstanding longer than 5 complete fiscal years, then the average annual interest rate on the bonds being refunded must be calculated by reference to the interest rate on the bonds being refunded currently in effect and over the total number of complete fiscal years of the issuer since the date of issuance of the bonds.

(MCA 7-7-2501; Referenced to MCA 7-7-4502)

Suggested Audit Procedures:

- Review the interest rates on bond issues and determine that they are as set by the governing body.
- Obtain the interest rate of the refunding revenue bonds and the refunded bonds and determine that the interest rate on the refunding bonds is at least $\frac{3}{8}$ of 1% less than the average annual interest rate on the bonds that are being refunded. If not, determine that one of the exceptions listed above applies.

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COMPLIANCE REQUIREMENTS AND SUGGESTED AUDIT PROCEDURES:

REVENUE BONDS - continued:

23. Compliance Requirements –Revenue bonds for Urban Highway System Projects:

- Upon approval by the Montana Transportation Commission, a county or consolidated city-county government may issue revenue bonds to finance the construction and construction engineering phases of projects on the urban highway system within its jurisdiction to:
 - (a) fund the share that the bond issuer might otherwise expend for proportionate matching of federal funds allocated for the construction of highways, roads, streets, or bridges;
 - (b) make a deposit to a reserve fund securing the bonds; and
 - (c) pay costs of issuance and sale of the bonds.

(MCA 7-7-110(1))

- The bonds may be authorized by a resolution adopted by the governing body without need for authorization by the electors. The resolution must establish the terms, covenants, and conditions of the bonds. The resolution may authorize that the bonds be issued under and secured by a trust indenture between the issuer and a trustee, which may be a trust company or bank having the power of a trustee inside or outside the state. The bonds may be sold at public or private sale, on terms and at prices that the governing body determines to be advantageous. (MCA 7-7-110(2))

(Note: The bonds do not constitute and may not be included as an indebtedness or liability of the issuer for purposes of any statutory debt limitation, do not constitute general obligations, and may not be secured by the taxing power of the issuer.)

- The bonds are payable from and secured by the grants or other funds payable to and received by the Montana Department of Transportation (MDOT) and apportioned by the MDOT to the issuer of the bonds for urban highway system improvements or for improvements conducted as provided in 15-70-101(2) (i.e., gas tax apportionment) . In the resolution or the trust indenture providing for the issuance of the bonds, the governing body shall irrevocably pledge and appropriate to the debt service fund from which the bonds are payable the funds apportioned or to be apportioned to the issuer by the MDOT in an amount sufficient to pay the principal of and the interest on the bonds as due. (MCA 7-7-110(3))
- Bonds may be issued only if:
 - (a) the bonds are issued in principal amounts and on terms that provide that the amount of principal and interest due in any fiscal year on the bonds and on any other revenue bonds of the issuer outstanding and issued for urban highway systems does not exceed the amount of the revenue pledged to the payment of the bonds and to be received in that fiscal year as estimated by the governing body in the resolution authorizing the issuance of the bonds; and

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COMPLIANCE REQUIREMENTS AND SUGGESTED AUDIT PROCEDURES:

REVENUE BONDS - continued:

23. Compliance Requirements –Revenue bonds for Urban Highway System Projects - continued:

- (b) the final maturity of the bonds is not more than 20 years after the date of issuance of the bonds.
(MCA 7-7-110(4))
- Proceeds from the sale of the bonds must be used to fund urban highway system projects approved by the Transportation Commission through an agreement with the issuer in accordance with MCA 60-2-127(4), and the proceeds to be used for the construction must be deposited with the MDOT. The proceeds must be expended by the MDOT in accordance with other applicable provisions of law. (MCA 7-7-110(5))
- A county or consolidated city-county government issuing bonds for urban highway systems shall certify to the director of MDOT and the director of the Department of Administration promptly upon the issuance of the bonds the principal amount and terms of the bonds and the amount of money required each fiscal year for the payment of principal and interest on the bonds. (MCA 7-7-110(6))

Suggested Audit Procedures:

- If urban highway system revenue bonds have been issued during the audit period, review a copy of the resolution authorizing the bonds and other documentation to verify that the local government complied with the above requirements.
- Verify that the maturity date of the urban highway system revenue bonds does not exceed 20 years.

TAX, REVENUE, OR BOND ANTICIPATION NOTES:

24. Compliance Requirements:

- Counties may sell short-term obligations in anticipation of taxes or revenues to be received during the fiscal year in which the obligations are issued. The proceeds must be solely expended for the purposes for which the taxes or revenues were appropriated and for costs related to the sale of the notes. (MCA 7-6-1102)
- The principal and interest on the notes must be repaid from the taxes and revenues in anticipation of which they were issued, income from investment of the proceeds of the obligations, and any money otherwise legally available for this purpose. (MCA 7-6-1102)

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COMPLIANCE REQUIREMENTS AND SUGGESTED AUDIT PROCEDURES:

TAX, REVENUE, OR BOND ANTICIPATION NOTES - continued:

24. Compliance Requirements - continued:

- The issuance of tax or revenue anticipation notes (short-term obligations) must be authorized by an ordinance or resolution that fixes the maximum amount of the obligation, the maximum amounts that may be outstanding, the maximum term and interest rate or rates, the manner of the sale, the maximum price, the form of the obligations including bearer or registered, the terms, the conditions and the covenants of the obligations. (MCA 7-6-1103)

Suggested Audit Procedures:

- If tax or revenue anticipation notes (short-term obligations) were issued during the audit period, review a copy of the ordinance or resolution authorizing their issuance and determine that it includes the items listed above.
- Test expenditures to determine that the proceeds were used for the purposes for which the taxes or revenues were appropriated, and for costs and expenses related to the issuance and sale of the notes.
- Determine that the payments of principal and interest on the notes were made from the receipt of the anticipated taxes and revenues, or from the other allowable sources.

25. Compliance Requirement:

- Tax or revenue anticipation notes (short-term obligations) may be renewed or refunded, but may not be renewed or refunded to a date later than 6 months from the end of the fiscal year in which the original short-term obligation was issued. (MCA 7-6-1105)

Suggested Audit Procedure:

- If tax or revenue anticipation notes (short-term obligations) have been renewed or refunded, determine that the new payable date was not later than 6 months from the end of the fiscal year in which the original short-term obligation was issued.

26. Compliance Requirements:

- The county commissioners may by resolution issue and sell notes in anticipation of the receipt of a state or federal grant or loan, or the sale of bonds. The amount of the notes may not exceed the total amount of bonds authorized and maturing within not more than 3 years from the date on which the notes are issued. Before the notes are issued, the county must receive a written commitment for a grant, loan, or bond purchase in an amount that is not less than the principal amount of the notes. (MCA 7-7-109(2))

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COMPLIANCE REQUIREMENTS AND SUGGESTED AUDIT PROCEDURES:

TAX, REVENUE, OR BOND ANTICIPATION NOTES - continued:

26. Compliance Requirements - continued:

- The proceeds of the grant, loan, or bonds must be credited to the debt service fund for the notes as may be needed for their payment, with interest, when due. (MCA 7-7-109(3))

Suggested Audit Procedures:

- If revenue or bond anticipation notes were issued during the audit period, determine that the county had received a written commitment for a grant, loan, or bond purchase in an amount at least equal to the principal amount of the notes. Determine that the amount of the notes did not exceed the amount of bonds authorized and maturing within not more than 3 years of the issuance date of the notes.
- Determine that the proceeds of the grant, loan, or bonds were credited to the debt service fund established for the notes, as needed for the notes' repayment, with interest.

DEBT LIMITATIONS:

(**Note:** Debt limitation provisions of MCA 7-7-2101, 7-7-2203 and 7-7-107, below, apply to the authorization and issuance of bonds occurring on or after July 1, 2001. The limitations do not apply to bonds authorized before July 1, 2001, regardless of when the bonds were issued.)

27. Compliance Requirements: **Overall County Indebtedness**

- A county may not issue bonds or incur other indebtedness for any purpose in an amount, including existing indebtedness, that in the aggregate exceeds 1.4% **(effective July 1, 2007 – 2.5%)** of the total assessed value of taxable property, determined as provided in MCA 15-8-111, within the county, as ascertained by the last assessment for state and county taxes. (MCA 7-7-2101)
- A county may not issue general obligation bonds for any purpose in an amount that, with all outstanding bonds and warrants except emergency bonds, exceeds the debt limitation referred to in 7-7-2101 (above). (MCA 7-7-2203)
- For road and highway bonds issued under Title 7, Chapter 14, Part 25, these bonds may not be issued in a principal amount that, with all the bonds and warrants of the county, exceeds 0.68% of the total assessed value of taxable property, determined as provided in MCA 15-8-111, in the county, exclusive of the total assessed value of taxable property in all incorporated cities and towns located in whole or in part within the county. (MCA 7-14-2520 and 7-14-2524)

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COMPLIANCE REQUIREMENTS AND SUGGESTED AUDIT PROCEDURES:

DEBT LIMITATIONS - continued:

Single-Purpose Limitations

Suggested Audit Procedure:

- If the county has incurred an indebtedness or liability, or has borrowed, in an amount exceeding the above amounts for a single purpose, determine if voter approval was obtained at an election held before the debt was incurred, unless one of the exceptions listed above applies.

Note: MCA 7-7-2101 and MCA 7-7-2402, discussed above, appear to contain conflicting provisions. AGO #13, Vol. 42 discusses that these two statutes were enacted the same year by the same legislature and have different objectives. MCA 7-7-2101 limits the creation of liability or indebtedness, while MCA 7-7-2402 limits the borrowing of money, terms which are not synonymous. A county can incur a liability or indebtedness without borrowing money. To clarify, this AGO gives the following examples:

1. Action taken by the board of county commissioners in contracting to remodel an airport building creates an indebtedness or liability against the county. The county did not borrow money to pay the contract price because it had funds on hand for the initial expenditure, and intended to raise the remaining amounts through tax levy that year.
2. An installment purchase contract is an incurring of a liability or indebtedness without borrowing money. An installment purchase contract is not “borrowing money” within the meaning of MCA 7-7-2402.
3. “Borrowing of money” includes the issuance of bonds, notes, and warrants.

At the time that AGO #13, Vol. 42 was issued, the indebtedness limitation of MCA 7-7-2101 was \$500,000 and the borrowing limitation of MCA 7-7-2402 was \$10,000. Subsequently, the borrowing limitation was increased to \$500,000 (1991 legislation), to \$750,000 & \$1 million for certain county classifications (1997 legislation) and to \$1 million, \$1.5 million and \$2 million according to county classification (2007 legislation). The indebtedness limitations of MCA 7-7-2101, however, have not been increased. To add to the conflicting provisions, the limitation of MCA 7-7-2101 states “except as provided in MCA 7-7-2402” and MCA 7-7-2402 includes in its limitations the phrase “and not exceeding the limits on county indebtedness established in MCA 7-7-2101”

29. Compliance Requirements:

City-County Consolidated Governments

- Except as provided in MCA 7-7-108, a city-county consolidated local government may not issue bonds for any purpose in an amount that, with all outstanding indebtedness, exceeds 2.5% of the total assessed value of taxable property, determined as provided in MCA 15-8-111, within the consolidated government, as ascertained by the last assessment for state and county taxes. (MCA 7-7-107)

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COMPLIANCE REQUIREMENTS AND SUGGESTED AUDIT PROCEDURES:

DEBT LIMITATIONS - continued:

29. Compliance Requirements - continued: City-County Consolidated Governments

(Note: The issuing of bonds for the purpose of funding or refunding outstanding warrants or bonds is not the incurring of a new or additional indebtedness but is merely the changing of the evidence of outstanding indebtedness.)

- A city-county consolidated government may incur an additional indebtedness by borrowing money or issuing bonds for the construction of a sewer system, for the procurement of a water supply, or for constructing or acquiring a water system which the consolidated government will own and control and devote the revenues there from to the payment of the debt. This additional indebtedness may not in the aggregate exceed 10% over and above the debt limitation referred to above in MCA 7-7-107. (MCA 7-7-108)

Suggested Audit Procedure:

- Determine the total indebtedness of the city-county consolidated government, and determine the taxable value of the property therein. Compare the taxable value to the total indebtedness and determine if the city-county's indebtedness is within the debt limitations described above.

DEBT SERVICE FUNDS FOR SCHOOL DISTRICTS:

30. Compliance Requirement:

- **Applies to bonds authorized on or after April 24, 2003:** The school district shall provide the county treasurer with a general obligation bond or impact aid revenue bond debt services schedule. (MCA 20-9-440)
- The county treasurer shall maintain a separate debt service fund for each school district and must credit all tax moneys collected for debt service to the fund for the payment of debt service obligations. The county treasurer must pay from the debt service fund all principal and interest on school district bonds when the interest and principal becomes due, and shall pay all special improvement district assessments when they become due. (MCA 20-9-440)
- **Applies to bonds authorized on or after April 24, 2003:** The county treasurer shall maintain a separate impact aid revenue bond debt service fund and an impact aid revenue bond debt service reserve account, if required. Upon receipt of the federal impact aid basic support payment, the county treasurer shall deposit in the impact aid revenue bond debt service fund the amount that is required to pay the principal of and interest on the impact aid revenue bonds coming due in the next 12-month period and to restore any deficiency in the impact aid revenue bond debt service reserve account.

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COMPLIANCE REQUIREMENTS AND SUGGESTED AUDIT PROCEDURES:

DEBT SERVICE FUNDS FOR SCHOOL DISTRICTS - continued:

30. Compliance Requirement:

Excess federal impact aid basic support payment revenue must be deposited as Impact Aid Fund as provided for in MCA 20-9-514. The school district and county treasurer may designate a trustee for holders of the bonds to receive the school district's impact aid revenue for purposes of making the annual debt service payments on impact aid revenue bonds and may authorize the trustee to establish and maintain the impact aid revenue bond debt service fund and impact aid revenue bond debt service reserve account. (MCA 20-9-440 & 20-9-472)

Suggested Audit Procedures:

- Review the financial records to determine that the county treasurer is maintaining a separate debt service fund for each school district and the principal and interest payments on school district bonds and payments on special improvement district assessments are made when they become due.
- Inquire of the county treasurer to determine if the school districts in the county have provided bond debt service schedules.
- Determine if the any of the bond issues for schools relate to Impact Aid Bonds. If so, verify that the county treasurer has established a separate impact aid revenue bond debt service fund and an impact aid revenue bond debt service reserve account, if required, as provided above.

BONDS ISSUED FOR SELF-INSURANCE OR DEDUCTIBLE RESERVE FUND:

31. Compliance Requirement:

- A county may sell bonds or notes for the purposes of funding a self-insurance or deductible reserve fund and the associated costs. The amount may not exceed 0.18% of the total assessed value of taxable property, determined as provided in 15-8-111, within the county as of the date of issuance. The bonds must be authorized by resolution of the governing body and are payable from an annual property tax levy authorized by MCA 2-9-212. Bonds or notes issued for this purpose do not constitute debt within the meaning of any statutory debt limitation. (MCA 2-9-211(5))

Suggested Audit Procedures:

- If bonds or notes are sold during the audit period for purposes of funding a self-insurance or deductible reserve fund, determine that they were authorized by resolution of the governing body, and that the amount of the bonds or notes issued did not exceed the limits as described above.

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COMPLIANCE REQUIREMENTS AND SUGGESTED AUDIT PROCEDURES:

BONDS ISSUED FOR SELF-INSURANCE OR DEDUCTIBLE RESERVE FUND:

Suggested Audit Procedures - continued:

- Determine that proceeds from the property tax levy authorized by MCA 2-9-212, were used for the payment of principal and interest of bonds or notes.

BONDS ISSUED FOR A HEALTH CARE FACILITY OR BOARDING HOME:

32. Compliance Requirements:

- Notwithstanding any limitation imposed by law upon the bonded indebtedness of a county, a county acquiring, erecting, furnishing, equipping, expanding, improving, or maintaining a health care facility under MCA 7-8-2102 or 7-34-2201, or a boarding home under MCA 7-34-2301, may borrow money and issue bonds for a health care facility or a boarding home, including refunding bonds, in the form and upon the terms as it may determine, payable out of any revenue of the facility or boarding home, respectively, including revenue derived from: (MCA 7-34-2411)
 - a. fees and payments for health care or boarding home services;
 - b. taxes levied under MCA 7-6-2512 or 7-34-2417, for a health care facility;
 - c. grants or contributions from the federal government; or
 - d. any other sources.
- The bonds may be issued by resolution or resolutions of the county governing body without any limitation of amount except as follows:
 1. no such bonds may be issued at any time if the total amount of principal and interest to become due in any year on such bonds and on any then-outstanding bonds for which revenues from the same source or sources are pledged exceeds the amount of such revenues to be received in that year as estimated in the resolution authorizing the issuance of the bonds; and
 2. the county shall be obligated to take all action necessary and possible to impose, maintain, and collect rates, charges, rentals, and taxes, if any are pledged, sufficient to make the revenues from the pledged source or sources in such year at least equal to the amount of such principal and interest due in that year. (MCA 7-34-2413)

Suggested Audit Procedures:

- Determine if there were any bonds issued for a health care facility or a boarding home during the audit period.
- If so, review a copy of the resolution authorizing the bonds and determine that the total amount of principal and interest to become due in any year on such bonds and on any then-outstanding bonds for which revenues from the same source or sources are pledged does not exceed the amount of the revenues to be received in that year as estimated in the resolution.

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COMPLIANCE REQUIREMENTS AND SUGGESTED AUDIT PROCEDURES:

BONDS ISSUED FOR A HEALTH CARE FACILITY OR BOARDING HOME – cont.:

Suggested Audit Procedures - continued:

- If there are outstanding bonds that have been issued for health care facilities or boarding homes, determine that the revenues pledged for their payment are sufficient to at least equal the amount of principal and interest due in the year being audited.

33. Compliance Requirements:

- A county may not issue bonds for a health care facility or boarding home to which all or a portion of the taxes levied under MCA 7-6-2512, are pledged or to which the general tax authorized under MCA 7-34-2418, is pledged until the question of approval of the issuance of the bonds has been submitted to the registered electors of the county. The notice and conduct of the election must be governed, to the extent applicable, by the laws governing the election on county general obligation bonds in Title 7, Chapter 7, Part 22, which was discussed above. If less than a majority of the electors voting on the issuance of the bonds vote in favor of the issuance of the bonds, the county may not issue the bonds.
(MCA 7-34-2414)
- The pledge of the taxes (levied under MCA 7-6-2512) to the payment of the bonds may not cause the bonds to be considered indebtedness of the county for the purpose of any statutory limitation or restriction. The pledge may be made by the board of county commissioners only upon authorization of a majority of the electors of the county voting on the pledge at a general or special election as provided in MCA 7-34-2414. (MCA 7-6-2512)

Suggested Audit Procedures:

- Determine if any revenue bonds for a health care facility or boarding home were issued with the payment being secured by tax levies.
- If so, determine if an election was held, and determine if the issuance of the bonds was approved by a majority of the qualified electors voting.

34. Compliance Requirement:

- In the event the bonds are not paid or are not expected to be paid from ordinary revenue of the facility, a county that has issued bonds under MCA 7-34-2411 for a health care facility may, subject to MCA15-10-420, levy taxes on the taxable value of all taxable property within the county in the manner provided for public hospital districts under MCA 7-34-2133 (MCA 7-34-2417).

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COMPLIANCE REQUIREMENTS AND SUGGESTED AUDIT PROCEDURES:

BONDS ISSUED FOR A HEALTH CARE FACILITY OR BOARDING HOME –cont.:

Suggested Audit Procedure:

- If a county has levied a tax under the authority of MCA 7-34-2417, because health care facility bonds are not paid or are not expected to be paid from ordinary revenue of the facility, determine that the tax levy does not exceed the limitations as described above.

35. Compliance Requirements:

- The governing body of a county may, with respect to bonds issued by the county pursuant to MCA 7-34-2411, for a health care facility and if approved by the voters as provided in MCA 7-34-2414, by resolution covenant that:
 - a. in the event that at any time all revenue, including taxes, appropriated and collected for the bonds is insufficient to pay principal or interest then due, it will levy a general tax upon all of the taxable property in the county for the payment of the deficiency; and
 - b. at any time a deficiency is likely to occur within 1 year for the payment of principal and interest due on the bonds, it will levy a general tax upon all the taxable property in the county for the payment of the deficiency.

The resolution must state the principal amount and purpose of the bonds and the substance of the covenant respecting deficiencies. (MCA 7-34-2418(1))
- The taxes are not subject to any limitation of rate or amount applicable to other county taxes but are limited to a rate estimated to be sufficient to produce the amount of the deficiency. (MCA 7-34-2418(2))

Suggested Audit Procedure:

- If a tax has been levied under the provisions of MCA 7-34-2418, determine that the governing body of the county adopted the required resolution and that voter approval was obtained.

LONG-TERM LEASE FOR DETENTION FACILITY OPERATION:

36. Compliance Requirements:

- A local governmental entity may enter into a long-term lease or agreement, not to exceed a term of 30 years, with a corporation proposing to operate a regional detention facility under Title 53, Chapter 30, Part 5, MCA.
- The local governmental entity may agree in the long-term lease or agreement to acquire the facility from the corporation through a lease or a lease option to purchase, subject to the limitations of Title 7, Chapter 7, Part 21, MCA. (MCA 53-30-511)

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COMPLIANCE REQUIREMENTS AND SUGGESTED AUDIT PROCEDURES:

LONG-TERM LEASE FOR DETENTION FACILITY OPERATION – continued:

Suggested Audit Procedures:

- Determine if the county entered into lease or agreement with a corporation proposing to operate a regional detention facility.
- If so, determine that the lease did not exceed a term of 30 years.
- If a lease exists, determine that it is appropriately reported in the financial statements and disclosed in the notes to the financial statements (i.e., capital lease or operating lease)

INSTALLMENT PURCHASE CONTRACTS:

37. Compliance Requirement:

- The county may enter into installment contracts for the purchase of any vehicle or road machinery of any kind, for any other machinery, apparatus, appliance, or equipment, or for any materials or supplies of any kind which cost in excess of \$4,000. The period of the installment contract may not be for more than 10 years. (MCA 7-5-2306)

Suggested Audit Procedure:

- Review contract documents for installment purchases to determine that the purchase cost was at least \$4,000 and that the installment period does not exceed 10 years.

CLEAN RENEWABLE ENERGY BOND PROGRAM (“CREBs”)

38. Compliance Requirement:

- The Energy Tax Incentives Act of 2005 authorized the issuance nationally of tax credit bonds to finance certain renewable energy projects (Clean Renewable Energy Bonds or “CREBs”), codified under section 54(f) of the Internal Revenue Code (IRC). Qualified issuers of these CREBs include a “governmental body”. Projects eligible for CREBs are identified in Section 45 of the IRC and include wind facilities, closed and open-loop biomass facilities, solar energy facilities, qualified hydro facilities, small irrigation facilities, geothermal energy facilities, landfill gas facilities, trash combustion facilities and refined coal production facilities. These projects are intended to produce sufficient energy to provide for the local government’s needs, allowing excess energy to be sold through the grid. The CREBs that local governments would issue would be payable from the revenues generated by the sale of the excess power and general fund revenue that would otherwise go to the purchase

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COMPLIANCE REQUIREMENTS AND SUGGESTED AUDIT PROCEDURES:

CLEAN RENEWABLE ENERGY BOND PROGRAM (“CREBs”) – continued:

38. Compliance Requirement - continued:

of electrical energy. A qualified issuer can issue CREBs to a qualified borrower between January 1, 2006 and December 31, 2007, however, the 2006 Act extended the expiration date to December 31, 2008.

- **Effective 5/3/2007** - Except as provided in MCA 90-4-1221, a governmental body may:
 - (a) issue revenue bonds to finance in whole or in part the cost of the acquisition, purchase, construction, reconstruction, improvement, or extension of any project;
 - (b) pledge to the punctual payment of its revenue bonds issued under this section and interest on the bonds all or a portion of the gross or net revenue of the project; and
 - (c) create and maintain reasonable reserves. (MCA 90-4-1205)
- **Effective 5/3/2007** - If the principal amount of clean renewable energy bonds, as limited by the Internal Revenue Code, is insufficient to finance all costs of a project as determined pursuant to MCA 90-4-1206, the governmental body may issue bonds to finance those costs and the costs of issuance of those bonds as:
 - (1) additional revenue bonds pursuant to 90-4-1205;
 - (2) obligations under 7-7-4104; or
 - (3) general obligations of a governmental body, provided that the issuance of the bonds are submitted to the electors of the governmental body as required by law. (MCA 90-4-1208)
- **Effective 5/3/2007** - Each revenue bond issued pursuant to MCA 90-4-1205 must state that the bond, including interest on the bond, is payable from the revenue pledged to the payment of the bond (MCA 90-4-1207)

(Note: The Board of Investments (BOI) at its December 1, 2006 meeting, authorized the creation of a Clean Renewable Energy Bond Pooled Loan Program (CREBPLP) subject to passage of HB 330 (Title 90, Chapter 4, Part 12, MCA). With this authorization the BOI can issue CREBs on behalf of the local governments and would be issued under the Municipal Finance Consolidation Act.)

Suggested Audit Procedure:

- Determine if the local government issued any CREBS during the audit period and determine if the provisions of Title 90, Chapter 4, Part 12, MCA, as noted above, were followed.